

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA,)	No. CR 99-40229 CW (LB)
)	
Plaintiff,)	
v.)	REPORT AND RECOMMENDATION
)	REGARDING DEFENDANT'S
ELBERT MCBRIDE, JR.,)	ADMISSION OF VIOLATIONS OF THE
)	TERMS AND CONDITIONS OF HIS
Defendant.)	SUPERVISED RELEASE OR
)	PROBATION
_____)	

The magistrate judge recommends to the district court that it accept defendant Elbert McBride, Jr's. admission to certain violations of the terms and conditions of his supervision as charged in the petition filed on April 19, 2010. Specifically, on March 24, 2010, the defendant admitted charge three as follows:

The defendant violated the general condition that he not commit another federal, state or local crime. On March 25, 2010, in the city of Oakland, the defendant was driving a vehicle with a suspended driver's license, in violation of California Vehicle Code Section 14601.1., a misdemeanor.

The magistrate judge makes the following findings:

1. On the hearing date set forth above, with the assistance of counsel, the defendant waived his right to admit the violations in district court and instead consented to admit the violations in a hearing in magistrate court. Specifically, the magistrate judge advised him that he had a right to admit the violations in district court and that under 28 U.S.C. § 636(b) and Federal Rule of Criminal Procedure 59, he could waive that right and consent to admit the violations in a hearing in magistrate

1 court. The magistrate judge also advised him that it would issue a written report recommending that
2 the district judge accept the admissions, that the district judge would review the recommendation
3 and decide whether to accept the admissions, and that the district judge and not the magistrate judge
4 would sentence him. The magistrate judge also advised him of the procedures (also set forth at the
5 end of this order) for challenging the magistrate judge's recommendation. The defendant then
6 waived his right to proceed in district court and consented to the magistrate judge's conducting the
7 hearing regarding the admission of the supervised release violations.

8 2. The magistrate judge then reviewed, and the defendant acknowledged that he understood,
9 the following: (a) the nature of the charge and the maximum penalty he faced; (b) his rights under
10 Federal Rule of Criminal Procedure 32.1(b)(2); (c) the district judge, not the magistrate judge, would
11 conduct the sentencing; and (d) the parties' sentencing agreement was not binding on the district
12 judge.

13 3. After the advisements set forth in Rule 32.1(b)(2) and summarized here, the defendant
14 waived his right to a Rule 32.1(b)(2) hearing and admitted the charges summarized above. The
15 magistrate judge found that he was fully competent and capable of admitting the charges in the
16 petition, that he was aware of the nature of the charges and the consequences of admitting them, and
17 that his admission and waiver of rights were knowing and voluntary. This court thus recommends to
18 the district judge that it accept the defendant's admissions.

19 4. Any party may serve and file specific written objections within fourteen days after being
20 served with a copy of this order. *See* 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59. Failure to file
21 objections within the specified time may waive a party's right to review. *See* Fed. R. Crim. P. 59(b).

22 5. At the parties' request, this court set the matter for further proceedings before the district
23 judge on Wednesday, June 2, 2010, at 2:00 p.m. The District Judge should be aware that the parties
24 have a joint sentencing recommendation of 21 day's custody and have agreed to certain additional
25 conditions of supervised release. In addition, at sentencing the probation officer will withdraw
26 charges one and two in the probation form 12.

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IT IS SO RECOMMENDED.

Dated: May 24, 2010



LAUREL BEELER
United States Magistrate Judge